

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TANYA SPURBECK,

Plaintiff(s),

v.

WYNDHAM DESTINATIONS, et al.,

Defendant(s).

Case No. 2:20-cv-00346-RFB-NJK

Order

[Docket Nos. 60, 70]

Pending before the Court is Defendants’ motion to strike two requests for judicial notice. Docket No. 60; *see also* Docket Nos. 58-59 (requests for judicial notice). Plaintiff filed a response in opposition. Docket No. 61.¹ Defendants filed a reply. Docket No. 64. Also pending before the Court is Defendants’ motion to strike an additional request for judicial notice. Docket No. 70; *see also* Docket No. 65 (request for judicial notice). Plaintiff filed a response in opposition. Docket No. 73. Defendants filed a reply. Docket No. 76. The motions are properly resolved without a hearing. Local Rule 78-1. For the reasons discussed below, the motions to strike are both **DENIED** without prejudice.

The motions to strike suffer from two fundamental flaws. First, both motions rely on Rule 12(f) of the Federal Rules of Civil Procedure, which provides a mechanism by which to strike material from a “pleading” in that case and does not extend to other filings. *E.g., United Nat’l Ins. Co. v. Assurance Co. of Am.*, 2014 WL 4960915, at *1 (D. Nev. June 4, 2014). A request for judicial notice is not a pleading. Hence, Defendants have fallen victim to one of the classic

¹ As Plaintiff is proceeding without an attorney, the Court construes her filings liberally. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 blunders of attempting to extend Rule 12(f)'s striking power beyond pleadings. *United National*,
 2 2014 WL 4960915, at *1.²

3 Second, Defendants' motions conflate two separate issues. A motion to strike involves a
 4 narrow issue of whether to strike a document from the record. A motion to strike is not generally
 5 geared toward rebutting the substance of the arguments made in the underlying document;
 6 opposing a request on its merits is instead accomplished through the filing of a response to that
 7 request. *See* Local Rule 7-2(b).³ Defendants' motions to strike are largely dedicated to arguing
 8 that it would be improper for the Court to grant the requests for judicial notice. Indeed, Defendants
 9 specifically request that the Court deny the requests for judicial notice. *E.g.*, Docket No. 60 at 2.
 10 Defendants' position on the merits of a request for judicial notice is properly advanced through
 11 the filing of a response to that request for judicial notice rather than by filing a motion to strike.

12 Accordingly, Defendants' motions to strike are **DENIED** without prejudice.⁴

13 IT IS SO ORDERED.

14 Dated: March 23, 2021

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 16 
 Nancy J. Koppe
 United States Magistrate Judge

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 18 ² District courts have authority to strike an improper filing under their inherent power to
 19 control the docket. *E.g.*, *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010);
 20 *Metzger v. Hussman*, 682 F. Supp. 1109, 1110-11 (D. Nev. 1988). "Striking material under the
 21 Court's inherent power is wholly discretionary." *Fed. Nat'l Mortg. Assoc. v. Willis*, 2016 WL
 22 11247554, at *1 (D. Nev. Oct. 14, 2016). In deciding whether to exercise that discretion, courts
 23 consider whether striking the filing would "further the overall resolution of the action," as well as
 24 whether the filer has a history of excessive and repetitive filing that has complicated
 proceedings. *Jones v. Skolnik*, 2015 WL 685228, at *2 (D. Nev. Feb. 18, 2015). Courts may also
 consider whether the document was filed for an improper purpose. *Sharkey v. Nev.*, 2020 WL
 2559920, at *1 (D. Nev. May 20, 2020). Courts have expressed reluctance at striking filings
 without a showing of prejudice to the moving party. *See, e.g.*, *Mitchell v. Nev. Dept. Of Corr.*,
 2017 U.S. Dist. Lexis 174002, at *1 (D. Nev. Oct. 20, 2017)). Defendants did not address whether
 the Court should exercise its discretion to strike these filings under its inherent authority.

25 ³ Put another way, that a request for judicial notice may be denied on its merits does not
 26 necessarily mean that grounds exist to strike that request. *Cf. Louisiana Municipal Police Emps.*
Retirement Sys. v. Wynn, 2013 WL 12216670, at *2 (D. Nev. Nov. 22, 2013) (denying request for
 judicial notice and also denying motion to strike that request).

27 ⁴ If Defendants continue to seek two forms of relief (*i.e.*, striking the requests for judicial
 28 notice and denying the requests for judicial notice), they must file separate documents for each
 type of relief. Local Rule IC 2-2(b).